80-262

Supreme Court, U. S.
FILED
AUG 11 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. _____

NORMAN F. DACEY
Petitioner

v.

JOHN P. COTTER, JOSEPH W. BOGDANSKI,
ALVA P. LOISELLE, JOSEPH S. LONGO
and ELLEN A. PETERS
Respondents

and

NORMAN F. DACEY
Petitioner

v.

HENRY J. NARUK
Respondent

APPENDIX TO
PETITION
~~PLAINTIFF/APPELLANT'S BRIEF~~

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NORMAN F. DACEY
810-A HERITAGE VILLAGE
SOUTHBURY, CONNECTICUT 06488
TEL. (203) 264-4440

March 10, 1977

Honorable John P. Cotter
Chief Court Administrator
Drawer N
Station A
Hartford, Conn. 06106

Dear Judge Cotter:

I am the plaintiff in an action against the Connecticut Bar Association which has long been in litigation. On April 6, 1976, the Connecticut Supreme Court remanded it for retrial and it has been on the "ready" list in Bridgeport since September.

The lengthy litigation has been complicated by the fact that every member of the judiciary who has been called to act in connection with it has been debarred by Connecticut General Statute 51-39 from sitting in judgment on the case by reason of the fact that they were themselves members of the defendant bar association and thus liable to contribute to the damages and costs of the action.

On Tuesday, March 1, at the call of jury cases in Bridgeport before Judge Irving Levine, counsel for the defendant bar association moved for a continuance of at least six months on the grounds that the defendant could not obtain a fair trial in Bridgeport because of the newspaper, radio and television publicity which has attended the hearings. Judge Levine, noting the fact of his own disqualification to act on the motion by reason of his membership in the defendant association, assigned the motion for a hearing before Judge Ellen B. Burns, then sitting on the court side in Bridgeport. Judge Burns is not a member of the bar association.

Judge Burns has just ruled that there is not sufficient evidence to support the motion for continuance, and has denied it. The matter is therefore now ready for trial, being third on the list. Judge Levine being the only one sitting on the jury side, the question of his disqualification must now arise again.

In view of the unusual circumstances, the recurring problem of disqualification, and the fact that the matter has now been in litigation for an entire decade, may I respectfully ask Your Honor if it would not be possible to assign Judge Burns, as the only member of the judiciary not prohibited by statute from hearing the case, to sit on the matter?

Trial being imminent, I respectfully bespeak Your Honor's early consideration of my request.

Very truly yours,

Norman F. Dacey

A-1

STATE OF CONNECTICUT
SUPREME COURT

CHAMBERS OF
JOHN P. COTTER
JUSTICE
CHIEF COURT ADMINISTRATOR

March 17, 1977

HARTFORD

Mr. Norman F. Dacey
516-A Heritage Village
Southbury, Connecticut 06488

Dear Mr. Dacey:

I have just received your letter of March 10, 1977 concerning a retrial of Dacey v. Connecticut Bar Assn., 170 Conn. 521.

There are a number of judges who are not members of the Connecticut Bar Association who would be in a position to try this case. I am, therefore, sending a copy of your letter to the Honorable Irving Levine, Acting Administrative Judge of the Superior Court in Fairfield County at Bridgeport to resolve this matter.

I would also suggest that the attorneys who represent you discuss this matter with Judge Levine so that it may be reached for a trial as quickly as possible.

Very truly yours,

John P. Cotter
Justice
Chief Court Administrator

JPC/fcc

cc: Hon. Irving Levine

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NORMAN F. DACEY

v. Civil No. B-77-269

HENRY J. NARUK

ORDER

Following this Court's sua sponte dismissal of plaintiff's complaint against defendant on grounds of absolute judicial immunity, plaintiff has moved to alter or amend the judgment and for leave to file an amended complaint. The amended complaint contains two damage claims and three claims that purport to seek equitable relief. The damage claims, allegedly grounded on federal antitrust provisions, still encounter the bar of judicial immunity since the only actions of defendant alleged to create personal liability are actions taken in a judicial capacity in the course of adjudicating a lawsuit. While equitable claims do not encounter the bar of judicial immunity, the claims alleged by plaintiff manifestly do not state claims on which relief can be granted. One claim seeks an order for jury trial in this case, a "claim" obviously dependent on the ex-

istence of some valid claim for ultimate relief somewhere in the complaint. Another claim seeks assignment of plaintiff's state court action against the Connecticut Bar Association for retrial in the state courts. This Court has no appellate jurisdiction over the state courts and no jurisdiction to order such a retrial. Finally, plaintiff seeks an order that the judgment in his state court action against the Connecticut Bar Association be "quashed" and that the defendant state court judge be enjoined from enforcing that judgment. Such a claim is a transparent attempt to have this Court exercise a non-existent appellate function with regard to the state court proceedings.

So that plaintiff's record in this Court will be complete, the plaintiff's Motion for Leave To Amend Pleading (i.e., file an amended complaint) is granted, the Motion to Alter or Amend Judgment is denied, and, solely to be sure that plaintiff's procedural maneuvers have not inadvertently defeated his federal appellate rights, the Clerk of this Court is directed to enter an additional judgment dismissing the action.

Dated at Hartford, Connecticut, this 18th day of November, 1977.

/s/ Jon O. Newman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

NORMAN F. DACEY Plaintiff	:	
	:	Civil Action No.
v.	:	B-77-269
HENRY J. NARUK Defendant	:	MEMORANDUM

MURPHY, D.J.

Defendant's motion to dismiss is granted. Dacey v. Dorsey, 568 F.2d 275 (2nd Cir. 1978); Dacey v. House, 573 F.2d 1289 (2nd Cir. 1977); Scarrella v. Midwest Federal Savings and Loan 536 F.2d 1207, 1209 (8th Cir.) cert. denied, 429 U.S. 885 (1976); Stump v. Sparkman, 435 U.S. 349 (1978), reh. denied, 98 S.C. 2862; Imbler v. Pachtman, 424 U.S. 409 (1976); Pierson v. Ray, 386 U.S. 547 (1967).

/s/ Thomas F. Murphy
Senior United States District Judge

Dated: March 9, 1979

No. 8716 SUPREME COURT

STATE OF CONNECTICUT

Norman F. Dacey

July 24, 1979

vs.

Connecticut Bar Association

ORDER

The plaintiff/appellant's Motion for Recusal having been presented to the court it is hereby ORDERED denied.

By the Court,

/s/ Thomas H. Abraham
Chief Clerk of
Supreme Court

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
SEP 7 9 04 AM
CLERK
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

NORMAN F. DACEY,

Plaintiff,

-vs-

JOHN P. COTTER, et als,

Defendants.

Civil No. B-79-338

ORDER

In the interest of justice and with Judge T. Emmet Clarie's consent, this case hereby is transferred to the docket of Judge Clarie.

It is so Ordered.

Dated at Bridgeport, Connecticut this 6th day of September, 1979.

T. F. GILROY DALY
United States District Judge

F-1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NORMAN F. DACEY

v. Civil No. B-79-338

JOHN P. COTTER, ET AL

MEMORANDUM OF DECISION

This action, brought under 42 U.S.C. §1983, seeks a mandatory injunction to prevent the hearing by the defendant Justices of the Supreme Court of Connecticut of the plaintiff's appeal from an adverse judgment in the re-trial of his libel suit against the Connecticut Bar Association.

Plaintiff claims that the membership of the justices in the Connecticut Bar Association, together with their possible liability on any award of damages and costs, requires that court to recuse itself under the provisions of C.G.S. §51-39.[1] He alleges that the court denied his motion that it do so, and that the court's failure to recuse will deprive him of his constitutional right to a fair trial.

Pending before this court are plaintiff's motion for a preliminary injunction and motion for disqualification, the latter the question of whether the office of the state's attorney general may properly represent the judges of the state Supreme Court. These motions need not be addressed however, since the court finds that it has no jurisdiction to decide this matter.

Defendants urge some interesting arguments that the injunction should not issue. They point to Dacey v. House, Civil No. B-76-146 (D. Conn. Feb. 18, 1977) (ruling on defendants' motion to dismiss) and Dacey v. House, Civil No. B-76-146 (D. Conn. May 17, 1977) (denial of motion for amendment or alteration of judgment under rules 59-60 of the Federal Rules of Civil Procedure) and urge that Judge Zampano's dismissal of the claim for damages based on the same arguments as presented here and his denial without written opinion, of the motion to amend to add a claim for injunctive relief constitute a decision on the merits that injunctive relief is not warranted. Citing Expert Electric, Inc. v. Levine, 554 F. 2d 1227, 1233 (2d Cir. 1977) they contend that the defendants here are "in substance [persons] whose interests were at stake in the prior litigation"(which involved the then justices of the Connecticut Supreme Court) and thus the doctrine of res judicata bars the relief requested here.

Defendants also point to the statement of the Second Circuit in Dacey v. Dorsey, 568 F.2d 275, 277 (2d Cir. 1978) where the court declined to decide whether a party, at whose instance recusal is sought and denied, ever has a claim under the civil rights statute. Instead, the Second Circuit noted that, when plaintiff Dacey asked the Connecticut Supreme Court to recuse itself from hearing the Bar Association's appeal of Dacey v. Connecticut Bar Ass'n., 170 Conn. 520 (1976), there was no other forum available for the State Court appeal. Citing Evans v. Gore, 253 U.S. 245, 247-48 (1920), the Second Circuit said in effect that

recusal was unnecessary: "When all are disqualified, none is disqualified." Defendants argue that this is still the law of this Circuit.

This court finds, however, that it may not consider these arguments because it lacks subject matter jurisdiction over the matter in controversy. The reasonfor this is the nature of the relief sought, a mandatory injunction prohibiting the Connecticut Supreme Court from hearing the matter, on the ground that a fair hearing before them is impossible.

Coming, as this action does, after a decision by the Connecticut Supreme Court that its hearing the case would not be improper, it amounts, in effect, to a request to this court to review that decision of the Connecticut Supreme Court. In this, it is very like the instant plaintiff's attempt in Dacey v. Naruk, Civil No. B-77-269 (D. Conn. Nov. 21, 1977) to have the District Court quash the verdict of the Superior Court in the re-trial of plaintiff's libel suit, on the ground that Judge Naruk's refusal to recuse himself because of his membership in the Connecticut Bar Association amounted to a denial of plaintiff's civil rights. In his decision on plaintiff's motion to alter or amend judgment in Naruk, Judge Newman characterized the motion as "a transparent attempt to have this Court exercise a non-existent appellate function with regard to the state court proceedings." Slip op. at 2.

The United States Supreme Court held in Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) that, when a state court has proper jurisdiction

over a matter and constitutional claims are raised therein, it is the province and duty of the state court to decide those claims.

If the decision of the state court is wrong, that does not void the validity of the judgment and "[under the legislation of Congress, no court of the United States other than this Court [i.e. the United States Supreme Court] could entertain a proceeding to reverse or modify the judgment for errors of that character." 263 U.S. at 416.

The principle that federal courts of inferior jurisdiction have no jurisdiction to review alleged errors in state court judgments has been held to apply to §1983 cases where the state court action is attacked as unconsitituional, even if the constitutional issue was not raised in the state court. Anderson v. Lecon Properties, Inc., 457 F.2d 929 (8th Cir. 1972) cert. den. 409 U.S. 879 (1972) cited with approval in Tang v. Appellate Division, 487 F.2d 138, 142 (2d Cir. 1973), cert. den. 416 U.S. 906 (1974);

Therefore, this court does not have jurisdiction to hear this action, which is in the nature of an interlocutory appeal; the proper forum is ultimately the United States Supreme Court. It should be noted that in this matter of jurisdiction, this case is distinguishable from Dacey v. Dorsey, Civil No. B-76-190 (D. Conn. Feb. 18, 1977) aff'd 568 F.2d 275 (2d Cir. 1978), Dacey v. Naruk, Civil No. B-77-269 (D. Conn. Jan. 31, 1978), and Dacey v. House, Civil No. B-76-146 (Feb. 16, 1977), aff'd 573 F.2d 1289 (2d Cir. 1977), all cases in which this court had jurisdiction. In Dacey v.

Dorsey, the District Court was not faced with effective over-ruling of a state court action. Instead, the complaint sought damages and injunctive relief for the alleged failure of a United States Attorney to investigate or otherwise act upon a complaint of unconstitutional action by the Connecticut Supreme Court.

In both Dacey v. Naruk and Dacey v. House, the District Court was initially presented with a §1983 claim for damages against the Connecticut Supreme Court for allegedly unconstitutional action. Of course, the state court is immune from a suit for damages, but this court has jurisdiction to so declare because seeking damages for an action of a court is not the same as seeking to require the court to rule differently or not to act on its ruling. Only when the latter is sought, is the District Court in the position of a potential appeals court and thus only then is it lacking in jurisdiction.

When plaintiff sought to amend to add injunctive relief in Naruk, Judge Newman denied the amendment for the reasons stated herein--an attempted exercise of non-existent appellate jurisdiction. Civil No. B-77-269 (D. Conn. Nov. 21, 1977).

When injunctive relief was sought to be added in House, Judge Zampano denied the motion without opinion. Civil No. B-76-146 (D. Conn. May 17, 1977).

It should be clear from this discussion that the outcome in the instant case would not have been different had plaintiff sought both

damages and injunctive relief. The damage claim would have given the court jurisdiction only on the damage issue; that jurisdiction would not have extended to allow this court to consider the request for injunctive relief.

Accordingly, thie action is dismissed for lack of subject matter jurisdiction.

SO OR DERED

/s/Ellen Bree Burns
United States District Judge

Dated at New Haven, Connecticut, this 5th day of October, 1979.

FOOTNOTE

1. Disqualification by relationship or interest. Judge may act with consent of parties. When there is so near a relationship between any judge and any party in any proceeding in court before him, as between father and son, brothers or uncle or nephew, by nature or marriage, or landlord and tenant; or when any judge may be liable to contribute to the damages, costs or expenses or any such proceeding, or when he may receive a direct pecuniary benefit by the determination thereof, he shall be disqualified to act, except as herein provided. No judge shall be disqualified to act in any proceeding by reason of his being a member of any ecclesiastical corporation, unless it is a party to the action, nor in any proceeding in which any town, city or borough is a party or interested, by reason of his being an inhabitant thereof or liable to taxation therein or by reason of his being related to any taxpayer or inhabitant

thereof. When any judge is disqualified to act in any proceeding before him, he may act if the parties thereto consent in open court.

UNITED STATES COURT OF APPEALS
For The
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 3rd day of March, one thousand nine hundred and eighty

Present:

HONORABLE IRVING R. KAUFMAN
Chief Judge
HONORABLE WILLIAM H. TIMBERS
Circuit Judge
HONORABLE HENRY F. WERKER
District Court Judge, sitting by designation.

NORMAN F. DACEY
Plaintiff-Appellant

v. 79-7657

HENRY J. NARUK
Defendant-Appellee

NORMAN F. DACEY
Plaintiff-Appellant

v. 79-7857

JOHN P. COTTER,
JODEPH W. BOGDANSKI,
ALVA P. LOISELLE
JOSEPH S. LONGO
ELLEN A. PETERS
Defendants-Appellees

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the

transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel for appellees and by appellant pro se.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgments of said District Court be and it hereby are affirmed.

Appellant has failed to allege facts sufficient to overcome the "fundamental policy against federal interference" in ongoing state court proceedings. Younger v. Harris, 401 U.S. 37, 46 (1971); accord, Huffman v. Pursue, 420 U.S. 592 (1975); Judice v. Vail, 430 U.S. 327 (1977). This court has indicated previously that appellant's constitutional allegations state "no claim cognizable in the federal courts." Dacey v. Dorsey, 568 F.2d 275 (2d Cir.), cert. denied, 436 U.S. 906 (1978). Accordingly, the district courts were without jurisdiction to award the relief requested. See Rooker v. Fidelity Trust Co., 263 U.S. 412 (1923).

/s/ Irving R. Kaufman
Chief Judge

/s/ William H. Timbers
Circuit Judge

/s/ Henry F. Werker
District Judge

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Court House, in the City of New York, on the thirteenth day of May, one thousand nine hundred and eighty

Present:

HON. IRVING R. KAUFMAN,
Chief Judge

HON. WILLIAM H. TIMBERS,
Circuit Judge

HON. HENRY R. WERKER
District Judge

NORMAN F. DACEY
Plaintiff-Appellant

v. 79-7657

HENRY J. NARUK
Defendant-Appellee

NORMAN F. DACEY
Plaintiff-Appellant

v. 79-7857

JOHN P. COTTER, JOSEPH W. BOGDANSKI, ALVA P. LOISELLE, JOSEPH S. LONGO and ELLEN A. PETERS individually and in their capacity as Justices of the Supreme Court of Connecticut
Defendants-Appellees

A petition for a rehearing having been

filed herein by plaintiff-appellant pro so

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

/s/ A. Daniel Fusaro, Clerk